

INFORMATION BULLETIN #93

INCOME TAX

JULY 2007

(Replaces Bulletin #93, dated June 2006)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Ethanol Production Tax Credit

REFERENCES: IC 6-3.1-28

INTRODUCTION

There is a tax credit for ethanol production and effective Jan. 1, 2008, there is an additional tax credit for the production of cellulosic ethanol. The credit can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, or the insurance premiums tax.

I. ETHANOL PRODUCTION TAX CREDIT

Ethanol is defined as agriculturally derived ethyl alcohol. Cellulosic ethanol is defined as ethanol derived solely from lignocellulosic or hemicellulosic matter. A taxpayer that produces grain ethanol at a facility located in Indiana that has the capacity to produce at least forty million (40,000,000) gallons of grain ethanol a year or which after December 31, 2003, increased its grain ethanol production capacity by at least forty million (40,000,000) gallons per year, may qualify for the grain ethanol credit.

A taxpayer that produces ethanol is entitled to a credit against the taxpayer's state tax liability equal to the product of twelve and one-half cents (\$.125) multiplied by the number of gallons of ethanol produced at the Indiana facility.

The total amount of credits for all taxable years allowed per taxpayer may not exceed a total of two million dollars (\$2,000,000) if the taxpayer produces at least forty million (40,000,000) but less than sixty million (60,000,000) gallons of grain ethanol in a taxable year. The total amount of credits for all taxable years for a taxpayer may not exceed three million dollars (\$3,000,000) in the case of a taxpayer who produces at least sixty million (60,000,000) gallons of grain ethanol in a taxable year. The total credits available to all taxpayers for all years that may be awarded for biodiesel production, blended biodiesel production and grain ethanol production may not exceed fifty million dollars (\$50,000,000).

The credit for cellulosic ethanol is limited to \$20,000,000 for all taxpayers for all taxable years, if the taxpayer produces at least 20,000,000 gallons of cellulosic ethanol in a taxable year. The \$20,000,000 limitation for cellulosic ethanol is not included in the \$50,000,000 limitation for biodiesel and ethanol production. A taxpayer claiming the credit for cellulosic ethanol production shall apply the credit against the state tax liability attributable to business activity taking place at the Indiana facility at which the cellulosic ethanol was produced.

II. ADMINISTRATION OF THE TAX CREDIT

Taxpayers desiring to claim the ethanol production tax credit must file a copy of the Indiana Economic Development Corporation's (IEDC)

certificate of eligibility when they claim the credit on the appropriate Indiana tax return.

III. PASS THROUGH ENTITIES

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit, but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same percentage as the person's distributive share of income. A shareholder, partner or member of the pass through entity should attach a copy of the certificate received from the IEDC by the pass through entity.

IV. CLAIMING THE CREDIT

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is applied against a taxpayer's use tax liability, the taxpayer is required to obtain a direct pay permit in accordance with IC 6-2.5-8-9. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against use tax due on its taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess to the succeeding taxable years. The taxpayer is not entitled to a refund or carryback of any unused credits. A taxpayer may not sell, assign, convey or otherwise transfer the credit.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive, flowing style with a large loop at the beginning of the first name.

John Eckart
Commissioner